



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/697,542	08/27/1996	ROBERT S. BLOCK	003750-006	9969
21839	7590	06/06/2005	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			SRIVASTAVA, VIVEK	
POST OFFICE BOX 1404			ART UNIT	
ALEXANDRIA, VA 22313-1404			PAPER NUMBER	
			2611	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

08/697,542

Applicant(s)

BLOCK, ROBERT S.

Examiner

Vivek Srivastava

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27, 31, 34, 45, 47 and 61-66 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 27 and 31 is/are allowed.  
6) ☒ Claim(s) 34, 45, and 61-66 is/are rejected.  
7) ☒ Claim(s) 47 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claims 45, 61, 63 and 65 are rejected under 35 U.S.C. 102(e) as being anticipated by Hite et al (US 5,774,170).***

**Regarding claims 45 and 61**, Hite discloses method and system for scheduling an advertisement during a program in relation the content of the program. Hite discloses comparing a commercial's context code with that of the program to ensure that a specific commercial is displayed during a specific program, i.e. a skiing commercial is displayed during a skiing program (see col 4 lines 33 – 44). It is noted that the selected commercial is displayed in the predetermined interval for the commercial slot when the commercial codes match or are above a 'predetermine threshold value'. The content having at least one aspect is inherently included, as it is used to match a commercial to a program in terms of context.

**Regarding claims 63 and 65**, Hite discloses method and system for scheduling an advertisement during a program in relation the content of the program. Hite discloses comparing a commercial's context code with that of the program to ensure that a specific commercial is displayed during a specific program, i.e. a skiing commercial is displayed during a skiing program (see col 4 lines 33 – 44). It is noted that the selected commercial is displayed after the interval of determination. The broadly claimed 'outside a predetermined time interval' can be met by outside of the predetermined time interval for determining the context code of the program. The content having at least one aspect is inherently included, as it is used to match a commercial to a program in terms of context.

Art Unit: 2611

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***Claims 34, 62, 64 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hite et al (US 5,774,170).***

**Claims 34 and 66** recites the same method for scanning, determining and scheduling as discussed above and is therefore not addressed here. Claim 66 further recites the program has an information label which rates the instantaneous content of the program at least two levels. Official Notice is taken it is well known to rate a program at two levels to provide a better more accurate means for determining the content of a program. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hite to include the claimed limitation to provide a better more accurate means for determining the content of a program.

**Regarding claims 62 and 64**, Hite fails to disclose the claimed wherein the instantaneous content comprises at least one category and a value for at least one category. Official Notice is taken it would have been well known to assign a category and value to a the category to provide a better more accurate means for determining the content of a program. Therefore, it would have been

Art Unit: 2611

obvious to one having ordinary skill in the art at the time the invention was made to modify Hite to include the claimed limitation to provide a better more accurate means for matching a commercial to a program with respect to content.

***Allowable Subject Matter***

***Allowable Subject Matter***

Claim 47 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 27 and 31 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (571) 272-7304. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7294. The fax

Art Unit: 2611

phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vs  
5/24/05



VIVEK SRIVASTAVA  
PRIMARY EXAMINER